

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of York,	:	
Appellant	:	
	:	
v.	:	No. 108 C.D. 2008
	:	Argued: September 8, 2008
Lawrence K. Kopp	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE McCLOSKEY

FILED: October 28, 2008

The City of York (the City) appeals from an order of the Court of Common Pleas of York County (trial court) granting the motion to strike filed by Lawrence K. Kopp (Property Owner). We affirm.

On July 13, 2007, the City filed a municipal claim and lien for \$54,000.00, plus costs, against two properties located in York, Pennsylvania and owned by Property Owner. The municipal claim alleged that the properties had collapsed due to an explosion that occurred on March 10, 2007. The City determined that the collapse of the property caused an unsafe condition and endangered the health, safety and welfare of the public. The City alleged that the owner of the property or his representative was given the option of hiring his own contractor to demolish the property or having the City acquire a contractor on his behalf. The City alleged that owner requested that the City obtain a contractor on

his behalf with the understanding that he was responsible for all costs associated with the demolition. The City acquired a contractor and the property was demolished. However, Property Owner did not pay the contractor. As such, the City filed a claim and lien against the property.

In response to the municipal claim, Property Owner filed a preliminary objection in the nature of a motion to strike. Property Owner alleged that the City was not authorized to file a municipal claim or lien to recover the cost of work done pursuant to a contract with a property owner. Property Owner alleged that the City was only permitted to seek a municipal claim in cases where it had provided a property owner with prior written notice that such action would be taken. The City did not allege that notice was provided here; thus, Property Owner requested that the trial court grant his motion to strike the municipal claim.

The trial court granted Property Owner's motion noting that a property owner may file a petition to strike a municipal lien where the lien is invalid on its face. Penn Township v. Hanover Foods Corporation, 847 A.2d 219 (Pa. Cmwlth. 2004). The trial court found that the municipal lien was defective on its face as it did not allege that the statutory requirements relating to notice were met.

The City now appeals to this Court.¹ The City alleges that the trial court erred in dismissing the municipal claim as it was not required to provide notice where it was responding to an emergency situation. The City also alleges

¹ Our scope of review of an order disposing of a petition to strike a municipal claim is limited to determining whether constitutional rights were violated or whether the trial court abused its discretion or committed an error of law. Penn Township.

that it was error for the trial court to dismiss the municipal claim where Property Owner had received actual notice of the City's intention to demolish the properties.

The issues stated above are identical to the issues raised and discussed in our opinion in City of York, Appellant v. Norma J. Stough (Pa. Cmwlth., No 106 C.D. 2008, filed October 23, 2008). In City of York, Appellant v. Norma J. Stough, we specifically rejected the City's arguments. As our decision in that matter controls the outcome herein, the order of the trial court is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge

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ORDER

AND NOW, this 28th day of October, 2008, the order of the Court of Common Pleas of York County is affirmed.

JOSEPH F. McCLOSKEY, Senior Judge